

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King	Team: Team # 8	CCRB Case #: 200402202	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/05/2004 1:00 AM	Location of Incident: c/o 42nd Street & Vanderbilt Ave in Manhattan	Precinct: 14	18 Mo. SOL 9/5/2005	EO SOL 9/5/2005	
Date/Time CV Reported Fri, 03/05/2004 1:20 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/10/2004 5:01 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Rubenstein	24550	931108	017 PCT
2. POM George Neilson	05769	924248	017 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Thomas Buzzitta	00119	903522	017 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM George Neilson	Discourtesy: PO George Neilson spoke obscenely to § 87(2)(b)	
B.POM George Neilson	Off. Language: PO George Neilson made remarks to § 87(2)(b) based upon the sexual orientation of § 87(2)(b)	
C.POM George Neilson	Abuse: PO George Neilson threatened to arrest § 87(2)(b)	
D.POM Jason Rubenstein	Discourtesy: PO Jason Rubenstein spoke obscenely to § 87(2)(b)	

Synopsis

The complainant in this case — § 87(2)(b) a § 87(2)(b) — filed his complaint by contacting 911 on March 5th, 2004 and subsequently being transferred to the NYPD Internal Affairs Bureau. § 87(2)(b) filed a complaint shortly after PO George Neilson of the 17th Precinct issued two summonses to him for “§ 87(2)(b)” and “§ 87(2)(b)”. § 87(2)(b) alleged that during the encounter, PO Neilson repeatedly resorted to profane language and at one point made reference to sexual orientation by using the term, “faggot.”

§ 87(2)(g)

§ 87(2)(b)

Summary of Complaint

IAB Log 04-06720

On March 5th, 2004 at 1:20 AM, § 87(2)(b) contacted the 911 emergency system and was transferred to the Internal Affairs Bureau command center. § 87(2)(b) reported that officers were blocking traffic in the vicinity of 42nd Street and Vanderbilt Avenue in Manhattan. When he asked the officers why the street was blocked, the officers replied, “you wait till we are done, faggot boy; just fucking wait.” § 87(2)(b) was issued a summons for discharging passengers in the street and he identified PO Neilson and PO Rubenstein as the two responding officers. The call-out also indicated that Sgt. McCann of Midtown North responded and spoke with § 87(2)(b) who reiterated his complaint.

CCRB statements

§ 87(2)(b) was interviewed via telephone on March 15, 2004 (Enclosure 5-5a). He provided a formal statement at the CCRB on March 29, 2004 (Enclosure 6-6d). The two statements are summarized as follows with differences noted. § 87(2)(b) is a 6’2” 180-pound, § 87(2)(b) old White male taxicab driver. On March 5th, 2004, PO George Neilson issued § 87(2)(b) two summonses for § 87(2)(b) (which § 87(2)(b) did not contest) and § 87(2)(b) (which he contested) in the vicinity of 42nd Street/Grand Central Station, specifically in front of the Hyatt Hotel located on 42nd Street.

According to § 87(2)(b) there were three police vehicles parked in front of the Hyatt on 42nd Street blocking the flow of westbound traffic on 42nd Street: a marked van parked beside the curb and two police cruisers beside it in the middle and center lanes. § 87(2)(b) s passengers, who were on their way to Grand Central, requested to exit the cab and § 87(2)(b) permitted this. The police vehicle in the middle lane then pulled out of the middle lane and § 87(2)(b) pulled his cab forward in order to ask a couple of uniformed officers standing by the marked van if 42nd Street were closed. He spoke to PO1, whose name he obtained from nameplate and the summons and whom he described as a youngish, White male with dark hair (fade cut) and mustache, approximately 6’2” with a skinny-medium build and wearing eyeglasses. PO1 repeatedly used profanity, specifically “fuck,” throughout their interaction. He asked PO1 if the street were closed and PO1 responded, “back the fuck up now.” § 87(2)(b) then said, “what?” and PO1 responded, “you back the fuck up now, scumbag.” § 87(2)(b) stated that he was only asking whether the street were closed, to which the officer responded, “and I’m telling you to back the fuck up

now.” § 87(2)(b) complained to the officer about his tone of voice and profanity, to which the officer responded, “you’re about to get tickets written up your ass.” In his formal statement, § 87(2)(b) alleged that PO1 said, “I’ll write your faggot-ass some tickets out the wazoo, pull the fuck over, I’m going to fuck you up now.”

§ 87(2)(b) pulled over and PO1 approached the vehicle, demanding his hack license and registration. § 87(2)(b) had difficulty getting the items but eventually handed them over to the officer. He admitted to speaking to the officer in a sarcastic tone. Once he provided his information to the officer, § 87(2)(b) then “remonstrated” with the officer, only to have PO1 respond, “shut the fuck up.” § 87(2)(b) responded, “I will not shut up unless I went back in time, died, and woke up in the Soviet Union this morning; I’m allowed to ask you and I’m allowed to remonstrate with you on this point.” In his telephone statement, however, § 87(2)(b) indicated that he referred to “Communist China” instead of the Soviet Union. In his formal statement, § 87(2)(b) claimed that PO Neilson responded, “and I’m allowed to arrest you; why don’t you shut the fuck up now or else I’ll cuff you and throw you in the van.” PO1, the officer’s partner who was standing on the passenger side of the van, said, “I’d shut the fuck up if I were you.” According to his formal statement, this was the only comment that PO2 made, whom § 87(2)(b) identified as PO Rubenstein from his nameplate.

In his formal statement, § 87(2)(b) also alleged that he asked PO1 for his shield number, but that PO1 did not provide it. Instead, PO1 placed his hand over his shield and said, “guess.” Upon further questioning, § 87(2)(b) claimed that the officer said, “fuck you, guess.” § 87(2)(b) then said, “no, I’m not gonna guess, you’re supposed to tell me, what is your badge number?” The officer then removed his hand and pushed his shield out from his chest, saying, “there’s my fucking badge.” PO1 also said, “what do you want my badge number for?” and § 87(2)(b) told him that he was going to file a complaint. PO1 responded, “go ahead, I’ve got a million of them.” § 87(2)(b) responded, “well this will be one million and one.” § 87(2)(b) made no mention of any of this in his telephone statement.

PO1 went to the van to prepare two summonses. While awaiting the summonses, § 87(2)(b) approached the van to record the van number and PO1 said, “get the fuck back to your car.” § 87(2)(b) informed the officer that he was recording the van number and the officers’ names. PO1 just said, “go ahead and shove them up your ass.”

§ 87(2)(b) then called 911 as well as the nearby Precinct station houses. While § 87(2)(b) attempted to reach the 14th Precinct desk sergeant, PO1 approached his vehicle and dropped the summonses on the cab’s trunk, saying, “next time, don’t be such a fucking smartass.” § 87(2)(b) did not allege that the officer said this to him during his phone statement. § 87(2)(b) told the officers that he was speaking to a desk sergeant and both of the officers walked briskly away and into Grand Central Station. He did not see the officers again.

During his phone statement, § 87(2)(b) referred to the officers as “savages” and at times spoke profanely of them. He also referred to the officers as “savages” in his formal statement. Mediation was offered during both statements, though § 87(2)(b) refused it outright each time. § 87(2)(b)

Results of Investigation

NYPD Records

PO Neilson and PO Rubenstein did not have memo books for this incident (Enclosure 7a-7b and 8-8a, respectively). PO Rubenstein had an entry at 2300 hours indicating that he conducted a search for a missing person inside of Grand Central Station. PO Rubenstein’s next entry at 1:30 AM indicated that he resumed patrol and noted, “negative results.”

SPRINT § 87(2)(b) (Enclosure 3) was § 87(2)(b)’s 911 call, which was subsequently transferred to IAB.

A query for a SPRINT related to a missing persons job at Grand Central Station found negative results (Enclosure 11 and 11a).

Two summonses (Enclosure 7) were issued to § 87(2)(b) one for § 87(2)(b) and a second one for § 87(2)(b).

Officer Statements

PO George Neilson, a 5’9” 187-pound White male with brown hair, was interviewed at the CCRB on April 15, 2004 (Enclosure 7-7c). PO Jason Rubenstein, 5’10” 210-pound White male with brown hair,

was interviewed at the CCRB on April 22, 2004 (Enclosure 8-8c). § 87(2)(g)

§ 87(2)(b) The officers were assigned to the 17th Precinct Cabaret Van (a marked van), which primarily responded to jobs pertaining to nightclubs and bars.

According to the officers, they were responding to a missing person job at Grand Central Station. Sgt. Thomas Buzzita, their supervisor for the shift, had requested that they respond to assist in the matter. They were in the lane nearest to the curb facing westbound on 42nd Street between Vanderbilt and Lexington Avenues. Sgt. Buzzita was in another marked police vehicle in the lane near the double yellow line and his vehicle was attempting to angle over towards the curb; the middle lane between the two police vehicles was open, which Sgt. Buzzita's vehicle was trying to enter. As the sergeant's vehicle started to pull to the curb, a taxicab pulled up into the middle lane. PO Neilson, who was the driver, looked back and gestured, "stop" with his hand and said "stop," as the two vehicles were near to colliding. PO Neilson was trying to speak to the sergeant about the missing person, but the taxicab tried to move forward, to which the officer once again told the cab to stop. At this, a passenger in the taxi exited – a violation, as they were in the middle lane and were beyond 12 inches from the curb. PO Neilson then gestured at the driver to pull over in front of him, which the taxi did. Sgt. Buzzita's vehicle made a U-turn and PO Neilson stopped the taxicab. The officers denied there was any conversation between them and the taxi driver prior to the taxi pulling over in front of the officers.

Once the taxi had pulled over, PO Neilson approached the cab and PO Rubenstein stood at the front of the van on the passenger side. PO Neilson asked for the § 87(2)(b)'s information, and the driver took his time getting the paperwork. PO Neilson said to the driver, "if you don't have your paperwork, I'm gonna have to arrest you," though eventually, the driver provided his paperwork. According to the officer, the driver then got on his phone and did not speak with PO Neilson again. The officers denied that any profanity was used. PO Neilson denied ever telling the driver to "shut the fuck up" and he denied that the driver said, "I will not shut up unless I died and woke up in Communist China (or the Soviet Union)." PO Neilson indicated that he would remember such a comment. PO Rubenstein did not hear any of the conversation between PO Neilson and § 87(2)(b) claiming that PO Secala, who also responded to the job, approached him and spoke about the missing person job, thereby diverting the officer's attention. PO Rubenstein did not know what, if anything, was said between the officer and the taxi driver.

PO Neilson returned to the van and prepared the summonses. Neither officer could recall if § 87(2)(b) § 87(2)(b) approached the van. PO Rubenstein denied that he ever told § 87(2)(b) "I'd shut the fuck up if I were you," though he claimed to have provided his shield number to § 87(2)(b) when asked. After preparing the summonses, PO Neilson placed them on the hood of the cab. PO Neilson denied using profanity with the driver or that the driver asked him for his shield number, that he covered his shield number with his hand and said, "guess." PO Neilson also denied pulling his shield forward and saying, "here's my fucking shield number." PO Neilson denied that § 87(2)(b) told him that he was going to file a complaint. PO Neilson denied saying to the driver that he was "going to fuck (the driver) up."

After giving the summonses, PO Neilson and PO Rubenstein entered Grand Central regarding the missing woman. They remained there for about an hour before resuming patrol. PO Neilson believed that Sgt. Buzzita found the woman about an hour after they left; PO Rubenstein recalled that Lt. Napoli found the woman on 42nd Street, but he did not know when this occurred.

Officer Statement – Sgt. Buzzita

Sgt. Thomas Buzzita, 6'1" 230-pound White male with a shaved head, was interviewed at the CCRB on August 6, 2004 (Enclosure 9-9c). On March 5, 2004, Sgt. Buzzita was the supervisor of the 17th Precinct Cabaret Unit and worked with PO Shocker. He had no memo book entries for this incident or a missing person incident at Grand Central at any time that night. At 1 AM, Sgt. Buzzita took his meal at the station house. He initially did not recall any kind of incident on 42nd Street outside of Grand Central. When informed that PO Rubenstein and PO Neilson had indicated that he was driving in the middle lane of 42nd Street near Grand Central Terminal, Sgt. Buzzita vaguely recalled seeing the officers on 42nd Street. However, he could not recall if he was present for any kind of taxi stop. Regarding the missing person situation, Sgt. Buzzita believed that PO Rubenstein and PO Neilson were called on cell phone to go to Grand Central.

Disposition of Summonses

§ 87(2)(b)

Civilian History

§ 87(2)(b) has filed two previous CCRB complaints prior to this one: § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Officer Histories

PO Neilson and PO Rubenstein have no substantiated allegations on their respective records.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified PO1 by name as PO Neilson by reading his nameplate as well as the name written on the two summonses. He described the primary subject officer as a youngish, White male with dark hair (fade cut) and mustache, approximately 6'2" with a skinny-medium build and wearing eyeglasses. PO Neilson, who indicated in his statement that he was the primary individual who interacted with § 87(2)(b) and issued § 87(2)(b) the summonses, partially matches § 87(2)(b)'s description, though he is not quite as tall as § 87(2)(b) described: 5'9". § 87(2)(b) identified PO Rubenstein by name and shield number; PO Rubenstein confirmed that he worked with PO Neilson and that he did not assist in the actual issuance of the summonses, instead standing back from § 87(2)(b)'s vehicle during the stop.

Facts

§ 87(2)(b) admittedly discharged passengers from his taxicab further than twelve inches from the curb on 42nd Street in the vicinity of Grand Central Terminal. There is also no question that there was some kind of encounter between § 87(2)(b) and the officers as he started to drive west on 42nd Street. PO Neilson directed § 87(2)(b) to pull over, which he did. At one point during the stop, PO Neilson threatened to arrest § 87(2)(b) though the parties differ as to the context and nature of this threat. § 87(2)(b) and PO Rubenstein agreed that PO Rubenstein provided his shield number to § 87(2)(b) when asked. PO Neilson subsequently issued § 87(2)(b) summonses for failing to yield to a police vehicle and discharging passengers from vehicle more than twelve inches from the curb.

Disputed Issues

§ 87(2)(g)
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Credibility

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(b) could not definitively recall if the officer called him a "faggot" or said that he would "write your faggot-ass tickets out the wazoo." This latter statement contrasted with § 87(2)(b)'s telephone statement, in which he claimed that the officer merely stated, "you're about to get tickets written up your ass." In fact, § 87(2)(b)'s statement to IAB, which is the first statement that he made regarding the incident, alleged that one of the officers stated, "you wait till we are done, faggot boy; just fucking wait." § 87(2)(g)

§ 87(2)(g) Initially, § 87(2)(b) claimed that PO Neilson covered his shield and simply said, “guess.” He then changed his statement, stating that the officer covered his shield and said, “fuck you, guess.” § 87(2)(g)

§ 87(2)(g)

Although PO Neilson had no memo book entries pertaining to a missing person search conducted at Grand Central and no SPRINT regarding a missing person job at Grand Central was located, PO Rubenstein did have a memo book entry at 2300 hours confirming that a missing person search was conducted at Grand Central and that at 1:30 PM, he resumed patrol having negative results for the search. § 87(2)(g)

§ 87(2)(g)

Allegation A. PO George Neilson spoke obscenely to § 87(2)(b)
Allegation B. PO George Neilson made remarks to § 87(2)(b) based upon the sexual orientation of § 87(2)(b)

§ 87(2)(b) alleged that PO Neilson repeatedly spoke obscenely towards him by using the word “fuck,” calling him a “scumbag,” telling him, “next time, don’t be such a smartass,” to list a few examples. § 87(2)(b) also alleged that PO Neilson at one point made used the word “faggot,” though he could not clearly recall the actual statement. In his IAB statement, § 87(2)(b) claimed that the officer said, “you wait till we are done, faggot boy; just fucking wait”; in his CCRB statement, he believed that the officer said, “I’m gonna write your faggot-ass tickets out the wazoo/ass.” PO Neilson and Rubenstein denied that PO Neilson resorted to obscene language during this stop. § 87(2)(g)

Allegation C. PO George Neilson threatened to arrest § 87(2)(b)

PO Neilson and § 87(2)(b) agreed that PO Neilson told § 87(2)(b) that he would be arrested. They disagree as to how and when this threat was made. § 87(2)(b) claimed that after he refused to shut up, stating “unless I woke up in Communist China/Soviet Union, I will not shut up,” that PO Neilson responded, “and I have the right to arrest you.” PO Neilson claimed that § 87(2)(b) did not initially provide his identification and that the officer informed him that he would be taken to the station house if he failed or refused to produce identification. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D. PO Jason Rubenstein spoke obscenely to § 87(2)(b)
§ 87(2)(b) alleged that PO Rubenstein told him, “shut the fuck up” and “I’d shut the fuck up if I were you.” PO Rubenstein denied making such comments; PO Neilson could neither verify nor refute this allegation, as he claimed not to have heard any such verbal communication between § 87(2)(b) and PO Rubenstein. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
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